

## **PBT Advisory Committee Draft Meeting Notes September 29, 2004**

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The third meeting of the PBT Rule Advisory Committee was held September 29, 2004 in Tacoma, Washington. The meeting was held at the at the City of Tacoma's Wastewater Treatment Plant's Transmission Meeting Room. A copy of the meeting agenda is included as Attachment 1\* on the Ecology PBT Rule Web page (for September 29, 2004).

The following advisory committee members attended the meeting:

**Nancy Dickeman** (for Kate Davies), Physicians for Social Responsibility  
**Dave Galvin**, King County Hazardous Waste Management  
**Steve Gilbert**, Institute of Neurotoxicology and Neurological Disorders  
**Diana Graham**, American Chemistry Council  
**Pete Hildebrandt**, Washington State Petroleum Association and Alcoa  
**Jeff Louch**, National Council for Air and Stream Improvement  
**Grant Nelson**, Association of Washington Businesses  
**Ivy Sager-Rosenthal**, People for Puget Sound  
**Pam Tazioli**, The Breast Cancer Fund  
**Laurie Valeriano**, Washington Toxics Coalition

Ecology staff presenting information during the committee meeting:

**Mike Gallagher**, Department of Ecology

The following representatives from government agencies signed in:

**Dave Bradley**, Department of Ecology  
**Rick Manugian**, Department of Ecology  
**Greg Sorlie**, Department of Ecology  
**Pat Springer**, EPA Region 10  
**Ann Wick**, Washington State Department of Agriculture

Additional stakeholders and members of the public also signed in:

**Mark Greenberg**, American Chemistry Council  
**Kelda Hendrickson**, BP Cherry Point  
**Ken Johnson**, Weyerhaeuser  
**Tim Johnson**, Conoco Phillips Ferndale  
**Llewellyn Matthews**, Northwest Pulp and Paper  
**Randy Ray**, Pacific Seafood Processors Association  
**Brian Rhodes**, Shell  
**Melissa Stoddard**, BP Cherry Point

Marc Daudon facilitated the meeting and Marley Shoaf took notes.

## Convene and Welcome

Marc Daudon welcomed the committee to the third PBT Rule advisory committee meeting. He explained that the purpose of the meeting was to provide input to Ecology on the criteria and the process for selecting chemicals for Chemical Action Plans (CAPs) and the process for developing CAPs.

Greg Sorlie, Special Assistant to the Director for Regulatory Improvement, was introduced to the advisory committee. Mike Gallagher explained that Greg has replaced Bill Backous as the lead for the PBT Rule development and PBDE CAP development. He explained that Ecology's Director, Linda Hoffman, made this decision due to increased external attention on the PBDE and PBT issues over the past few months.

## Conclusions and Outcomes from Meeting #2

Mike Gallagher presented the general outcomes and conclusions from the previous committee meeting (September 8<sup>th</sup>). A copy of the presentation is included as Attachment 3\* on the Ecology PBT Rule Web page (for September 29, 2004). General conclusions from meeting #2 were that committee members have different points of view about the terminology that Ecology should use in the PBT Rule, the purpose of the Rule, the length of the list of PBT chemicals, criteria for choosing chemicals to be on the PBT list, whether or not to include metals on the list, and whether or not the PBT Rule is a significant rule or a procedural rule. General areas of agreement among committee members were that the PBT list should be based on sound science and that Ecology's approach and criteria should be based on work done by other groups (i.e. Ecology should not start from scratch). Mike presented a list of attributes of a good rule that the committee discussed at meeting #2 (Attachment 4\* on the Ecology PBT Rule Web page (for September 29, 2004). He explained that the list of attributes does not necessarily represent consensus among committee members. Committee members said that a good rule has a clear format, is transparent, clearly defines goals and intent, is flexible, provides certainty, includes timelines, is comprehensive, and includes action and public notification. Additional attributes that were not agreed upon include adopting the precautionary principle, lengthening the public comment period, and following the significant rule making process.

## Overview of Initial PBT Rule outline

Mike presented Ecology's initial outline of the PBT Rule, included as Attachment 2\* on the Ecology PBT Rule Web page (for September 29, 2004). The outline is separated into three parts: Part I (General Provisions), Part II (The PBT List), Part III (Chemical Action Plans). Part I includes purpose and goals, applicability, chapter summary, exemptions to the PBT list, and administrative principles. Part II includes the purpose of the PBT list, list of chemicals, criteria to add and remove chemicals, and opportunities for public involvement. Part III provides the definition of a CAP, criteria for selecting chemicals for CAPs, content for CAPs, process for CAPs, and public notification. Mike explained that Ecology used models such as the Model Toxics Control Act (MTCA) Rule to shape the PBT Rule outline, rather than starting from scratch. Committee member comments on the PBT Rule outline included:

- **Good outline.** Several committee members liked the outline.
- **Definition section may be useful at the beginning.** One committee member said that providing definitions at the beginning of the document would be helpful. He stated that many rules provide the definition up front, so that the reader knows what they are dealing with before they get to the content.

- **Economic costs should be more inclusive.** One member would like the economics section 5e to include the economic cost of public exposure to PBTs. Currently, section 5e states "Ecology will evaluate the costs of implementing the management alternatives."
- **Precautionary approach should be included.** One member would like Ecology to include the precautionary approach in the Administrative Principles section under sound scientific information.
- **The Purpose of the PBT program should be stated.** One member said that under the purpose and goals section, the purpose of the PBT program should be described.

## Overview of Part I of the Draft PBT Rule

Mike handed out Part I - General Provisions of the PBT Rule, included as Attachment 2\* on the Ecology PBT Rule Web page (for September 29, 2004). Part I of the draft Rule includes purpose and goals, applicability, chapter summary, exemptions to the PBT list, administrative principals, and definitions. The committee was asked if 1) Ecology captured the four purposes of the PBT Rule as reflected in the budget legislation, 2) if Ecology effectively captured the range of ideas expressed at the September 8<sup>th</sup> committee meeting, 3) if anything is missing from Part I, 4) if the approach for Part I makes sense, 5) if the Applicability section needed, and 6) if there is a need for the Administrative Principles Section. Committee comments included:

- **The purpose of the list has not been captured.** A few committee members did not think that Ecology captured the purpose of the PBT list in Part I. One member stated that the goal of the list is not to just develop CAPs. She said that the list should be used for other purposes, including hazardous and solid waste planning. Another member disagreed and said that the legislative order states that the purpose of the list is to define the CAP process. One member pointed out that Ecology should be mindful of the PBT list as they move forward with other chemical regulations. Several members urged Ecology to clearly state the purpose of the PBT list and define what the PBT list will be used for. One member said that the advisory committee will be more focused if Ecology defines what the PBT list will be used for.
- **Is the Rule adopted by Ecology or the State?** One member asked if the PBT Rule is Ecology-specific or if it applies to all State governments and agencies. He questioned whether it was Ecology adopting the Rule or the State. One member pointed out that the language in the Executive Order is very broad and that it applies to Washington State, not just Ecology. Another member said that local governments pay attention to rules that apply at the State level, not just one agency. One member said that it is very difficult for agencies to impose rules upon each other without having them participate in the rule making process. ACTION ITEM: Ecology agreed to research this question and report back to the committee.
- **Need a statement about the need for a PBT Rule.** One member stated that Ecology needs to include a discussion in the Rule about why there is a need for the PBT program. Other members agreed that a statement needs to be included in the Rule regarding the goal and purpose of the program. One member said that this would help to educate and inform the public.
- **Wording used in the Rule is very important.** One member suggested that Ecology needs to look closely at the definition of the words they intend to use in the draft Rule, such as "possible," "feasible," "minimize," and "reduce." He said that Ecology should use the goal and purpose from the EPA's PBT Strategy.
- **The Rule should reference the Department of Health (DOH).** One member pointed out that Ecology does not reference the DOH in the plan and suggested that they do so.

Some members said that when biomonitoring occurs, the link with DOH will be very important. Ecology explained that DOH and Ecology were partners in the CAP process, but that Ecology has not made a decision to partner with DOH in the rule making process.

- **Administrative principles section is useful.** Some members said this was a useful section and should be included if it provides clarity and direction on the Rule's purpose. Ecology clarified that some administrative principles used in the draft Rule were developed from MTCA.
- **Administrative principles section should include the precautionary principle.** One member said that the administrative principle section should include precautionary principle language and a broad statement about the ethical and social responsibility of addressing PBT chemicals.
- **It does not make sense to have a rule based on sound science and exempt an entire group of chemicals.** One member stated that the PBT Rule should be based on sound science and should be inclusive of any chemical entity that meets the criteria for being on the list. He stated that it does not make sense to exempt an entire class of chemicals if the list is based on sound science. He said that Ecology needs to include a description of the exemption process in the "Exemptions to the PBT List" section of the Rule. One member said that Ecology can use sound science for the chemicals they choose to address, even if some chemicals are exempt. One member stated that the PBT Rule will last for many years and that Ecology needs to determine how to deal with pesticides when the exemption expires. Another member was concerned about the public's perception of having a rule that is not consistently based on sound science. Ecology stated that the legislature mandated that pesticides are not to be included in the rule making process or on the PBT list.

## Criteria & Process for Selecting Chemicals for CAP Development

To provide context for the discussion of the criteria and process for selecting chemicals for a CAP, Mike presented an overview of Ecology's experience with Mercury and PBDE CAPs. His presentation is included in Attachment 3\* on the Ecology PBT Rule Web page (for September 29, 2004). He explained that Mercury was chosen for a CAP based on several factors: widespread use and release in Washington, DOH fish consumption advisories, listings on the Clean Water Act 303(d) list, and readily available alternatives. He explained that PBDEs were selected for the next CAP by Executive Order and that they were chosen based on concern from DOH, increasing levels found in human breast milk and the environment, and legislation passed in other states (e.g., California). Mike explained to the committee that the Stockholm Convention is another example of a CAP process and that the process involves collecting information on chemicals (e.g., environmental fate) and conducting hazard assessments and risk evaluations. A copy of the Stockholm Convention: Article 8 was distributed to committee members and is included as Attachment 5\* on the Ecology PBT Rule Web page (for September 29, 2004).

Committee comments on the Stockholm Convention approach included:

- **Convention is not a reasonable model to select chemicals for CAPs.** Committee members discussed the relevance of the Stockholm Convention protocols to the process of choosing chemicals for CAPs in Washington State. One member said that while the Convention has some interesting elements, Ecology should not go through such a cumbersome and costly process to choose a chemical for a CAP. One member said that the Stockholm Convention describes a process and does not provide a model for how

decisions are made. Another member agreed and observed that the final decisions are ultimately made considering political factors. Some members said that the process of choosing chemicals for CAP development needs to be flexible and that PBT characteristics, health and ecological hazards should be considered in the process.

- **Convention model may save Ecology money.** One member said that the Stockholm Convention model may save Ecology money and allow Washington to spend dollars on other important efforts. He used the example of the Mercury CAP and said that there was not much that Ecology could do to reduce risks to human health and the environment because some of the sources of Mercury were from outside the State.
- **The DSL Process is a good model.** One member suggested that Ecology look at the Canadian DSL process. (This process has been described in previous meetings and is included in previous meeting handouts).

Committee members were asked to comment on the process for selecting chemicals for CAPs and whether or not chemicals should be ranked or prioritized. In addition, they were asked what characteristics Ecology should consider when designing an approach to ranking and prioritizing PBTs. Committee member comments and perspectives included:

- **Ranking is a logical approach.** Many committee members agreed that Ecology needs a process for ranking and prioritizing chemicals. One member suggested that Ecology should look at existing scoring or ranking schemes as a guide.
- **The PBT list should be chemical-specific.** Some committee members said that Ecology should consider specific chemicals, not just classes of chemicals. One member stated that many chemicals within the same family have different characteristics and they need to be ranked and addressed separately.
- **The PBT list does not need to be chemical-specific.** Some committee members said that the list needs to be flexible and that there are similar chemical toxicities within each class, therefore, the entire class can be considered. One member pointed out that in the Strategy document, Ecology considered PAHs as a class of chemicals. One member questioned how Ecology will address chemicals that break down into different chemical forms.

Ecology presented several factors that may be used to rank or prioritize chemicals: PBT characteristics, use in Washington, release in Washington's environment, presence in Washington's environment, exposure pathways, opportunities for reduction, minimization or elimination, technical feasibility and costs, and regulatory program requirements.

Committee comments on the factors to rank and prioritize chemicals included:

- **Ecology should emphasize health risks.** One member pointed out that Ecology needs to emphasize human health, rather than just looking at exposure pathways.
- **Ecology should consider environmental, public, and occupational health.** One member pointed out that Appendix F of the Stockholm Convention specifically considers environmental, public, and occupational health. He said that Ecology should add this to the list of factors that they are considering.
- **Some factors are more important than others.** One member stated that some factors on the list are more important than others. For example, she said that PBT characteristics or intrinsic hazards are more important than technical feasibility and that health and ecological hazards should be considered before presence and release in the environment. She also pointed out that Ecology needs to state how they plan to determine presence and release in the environment.

- **All of the factors listed by Ecology are equally important.** One member said that Ecology has come up with a good list of factors and that one factor is not more important than another. He did not think that Ecology should rank the factors and wanted them to be considered equally.
- **The “presence in Washington’s environment” factor should be expanded.** One member said that Ecology should expand the presence in the environment to include presence in humans and wildlife.
- **Ecology needs to clarify and possibly revise the meaning and significance of the “regulatory program requirements” factor.** One member said that the reason the PBT program exists is because existing regulatory mechanisms are not always working. She said that Ecology should not give a lower priority to a chemical just because it is being addressed by another agency.

Mike presented the committee with the possible approaches and frameworks for ranking and prioritizing PBT chemicals. His presentation is included in Attachment 3\* on the Ecology PBT Rule Web page (for September 29, 2004). The possible approaches presented to the committee were: 1) quantitative scoring frameworks, 2) qualitative evaluation frameworks, 3) expert committee frameworks, and 4) hybrid frameworks. Dave Bradley (Department of Ecology) explained to the committee that the approach used in the PBT Strategy document was a hybrid of qualitative and quantitative methods. Mike explained that Ecology looked at presence in Washington, other regulatory programs, and Ecology’s ability to achieve results and then grouped chemicals into high, medium, and low categories. The committee was asked to comment on the possible approaches for ranking and prioritizing PBT chemicals:

- **Ecology needs to determine why the chemicals are being ranked.** One member said that Ecology needs to state why they are ranking the chemicals and should be clear if the purpose of ranking chemicals is to establish priorities for CAP development.
- **Sequential steps for ranking and prioritizing chemicals are logical.** Several committee members agreed that Ecology should use a phased process to rank chemicals. One member suggested that Ecology should start with a quantitative assessment, followed by a feasibility study to determine what outcomes would be associated with completing an action plan for a given chemical.
- **Lack of information in databases needs to be considered.** One member said that Ecology needs to account for the lack of information in databases because there is a lot of environmental data that are not quantified, but qualitatively may be important.
- **Ecology needs a system to collect data on chemicals.** Some members said that if a chemical is ranked as a low priority for CAP development because inadequate data are available, Ecology needs to have a system to gather data on that chemical without having to go through the CAP process. One suggestion was to have a separate list to identify chemicals for which additional information is needed. Another member suggested that Ecology should have the new information reviewed by technical experts.

After discussing the possible approaches to ranking and prioritizing chemicals, the committee was asked to comment on additional questions and issues including 1) should the ranking and prioritizing process be used as the basis for selecting materials for a CAP, 2) should chemicals be selected in order of priority on the list, 3) should all chemicals on the list be subject to a CAP, 4) what involvement, if any, should stakeholders have in the selection process, 5) how would the process of selecting chemicals be communicated to the public and stakeholders, and 6) should timelines be included in the Rule related to the selection process. Committee comments to these questions are captured below:

- **The list may not have a definitive order.** One member pointed out that Ecology will probably not have a list with an exact order or ranking of chemicals, rather they will likely have a list that can be categorized into high, medium, and low priorities.
- **Differing opinions on Ecology's charge to prioritize chemicals.** One member said that it is not Ecology's charge to choose the chemicals that will receive CAPs. He stated that it is Ecology's role to put a process into place. Some members disagreed and said that Ecology should rank chemicals in the Rule to establish CAP priorities.
- **Not all chemicals on the list should be subject to CAPs.** Several members agreed that not all chemicals that make the list will necessarily need to have a CAP developed.
- **Committee members are concerned about saving money and time.** Several members were concerned about conserving resources and time. For some members, this meant involving stakeholders in the CAP selection process; for other members, this meant that stakeholder processes are streamlined and Ecology should choose chemicals for CAPs with minimal outside input.
- **Differing opinions on the role of public comment and stakeholder involvement.** Several members agree that public and stakeholder involvement is important, however, they disagreed about when the public should be involved and when Ecology should make decisions on its own. One member said that stakeholders can participate in the public comment period during the rule making process, therefore there does not need to be a separate stakeholder process for choosing chemicals for CAPs. Some members said that Ecology, rather than stakeholders, should choose which chemicals are subject to a CAP, and that stakeholder involvement can occur during the CAP process itself. Other members disagreed and said that Ecology should have a public process for selecting listed chemicals for CAPs. One member proposed a CAP notice process, similar to the rule making process, in which stakeholders can comment for 30-60 days. He stated that this would ensure that the process is done correctly the first time. Some members disagreed, stating that this process would be cumbersome and would not solve and significant problems.
- **Timelines are important.** Several members agreed that timelines are important and want timelines that assure that the process of developing plans moves forward. A couple of members stated that available resources will determine whether or not the CAPs move forward, not a timeline.
- **Timelines may be artificial.** One member was concerned that timelines may cause Ecology to rush and make poor decisions. He said that while a goal to develop CAPs may be useful, a requirement is not necessary. Another member disagreed, stating that Ecology has been working on PBT issues for several years and that Ecology are not rushing to develop CAPs.

## Process for Developing and Implementing CAPs

Mike presented information on Ecology's experience in developing and implementing CAPs for Mercury and PBDEs. His presentation is included in Attachment 3\* on the Ecology PBT Rule Web page (for September 29, 2004). The Mercury CAP involved establishing an external advisory committee, collaborating with DOH, working within a specified timeline, public comment, and recommendations (e.g., voluntary reductions, research, monitoring, and education). The PBDE CAP followed a similar process, including collaborating with DOH, working within a specified timeline, public comment, and recommendations. Ecology asked the committee to comment on the following questions: 1) is the approach used for Mercury



and PBDEs is a good model that should be written into the PBT Rule, 2) should other approaches for CAP development be considered, 3) what economic or cost analysis should be applied, 4) should a timeframe should be specified, 5) whether an initial background research phase is needed, and 6) if there are other processes or procedures that should be specified in the Rule. Committee comments:

- **Committee members generally agreed that the CAP process for Mercury and PBDEs is a good model.** Several members agreed that the approach used for the Mercury and PBDE CAP development is logical. Some members stated that the Rule needs to outline the details of a CAP and what the CAP should cover. One member said that the economic analysis used in the PBDE CAP is a good model.
- **Health costs and externalized costs should be considered.** A few members stated that in addition to economic costs to businesses, Ecology should consider the costs of disease and public health. One member pointed out that there are several costs of disease that need to be considered (e.g. physician visits, prescriptions, and loss of work).
- **A timeframe for CAP development should be specified.** One member said CAP development should not take longer than one year.
- **Each CAP is unique.** When asked whether or not implementation of the CAP should be included in the Rule, several members stated that each CAP is unique and implementation will differ with each chemical and each CAP.
- **The initial background research phase should depend on available information.** Several members agreed that a background research phase is important and that it will vary for chemicals depending on the amount of available information. One member pointed out that there is at least some initial information about all the chemicals that make the PBT list, therefore, the initial research phase is already happening and does not need to be specified for every CAP.
- **Ecology needs a measurement of progress in the Rule.** One member pointed out that Ecology has not "closed the loop" in the Rule and has not included a method to measure progress. He suggested an approach similar to what is used in the EPA Strategy. Another member said that the Stockholm convention had provisions to measure success and that it could be used as a model. One member said that Ecology needs to measure success by looking at improvements in the environment and a reduction in human health risks. He said that Ecology should be able to determine the amount of progress made for the amount of money spent.
- **Stakeholders should come to the CAP process prepared to propose action.** One committee member said that industry representatives need to come to the CAP processes with proposed actions. She said that much time is wasted discussing whether or not a chemical poses a problem and that the time would be better used focusing on solutions. Another member said that industry and business representatives do try to discuss solutions, but that Ecology does not always use the information they provide. One member pointed out that only 13% of pollution comes from business.

The committee had a significant discussion around the application of significant rule legislation to the PBT Rule and CAP development process. Some members support a flexible PBT Rule and CAP planning process that are not burdened by the detailed requirements of significant rule requirements. Several members said that the PBT program is losing sight of its purpose and that they are frustrated that personal health and public health concerns are less important than costs to businesses. Members supporting the application of the significant rule process stated that following administrative procedures is not burdensome and that following administrative procedures creates a system of checks and balances.



- **The PBT Rule is a significant rule making process.** One member disagreed with Ecology's determination that this is a procedural rule and provided definitions established by the State Legislature (Attachment 6\* on the Ecology PBT Rule Web page (for September 29, 2004)) in RCW 34.05.328. Specifically, he stated that the definitions provided in section 5(c)i-iii suggest that the PBT Rule is a significant legislative rule. He said that the PBT Rule poses significant costs to the business community and suggests that the process for developing CAPs should be considered a significant rule making process. Greg Sorlie explained that Ecology considers the PBT Rule to be a procedural rule because the rule is not amending a program or changing major policies. **ACTION ITEM: Ecology will discuss with the Attorney General's office once again the issue of whether or not the PBT rule making process should be considered a significant rule and report back to the advisory committee.**
- **The PBT Rule is a procedural rule.** Some members stated that the Rule is a procedural rule and that Ecology has already made this determination. One committee member said that the cost-benefit analysis in the significant rule language is not appropriate and that it only considers a traditional cost-benefit analysis. She said that the cost-benefit analysis needs to have a broad scope and include the cost of PBT chemicals to public health and our society.
- **The CAP process should abide by the significant rule provisions.** One member stated that, in his opinion, actions under CAPs are significant rules and that Ecology needs to look at the provisions set forth in the definition of a significant rule. He would like Ecology to include the relevant aspects of significant rulemaking in the CAP process. He suggested certain elements or provisions detailed in RCW 34.05.328.

## Public Comment

Members from the audience participated in the advisory committee discussion in the morning and afternoon sessions. Public audience comments from both sessions are captured below.

**Randy Ray** - representing the Pacific Seafood Processors Association. Randy was concerned that the PBT Rule would have a negative effect on the fishing industry and he questioned why there is not a representative from the fishing industry on the advisory committee. Randy said that exposure pathways should be the strongest criteria on the list and that a chemical's existence does not necessarily make it a PBT in Washington State. He stated that the PBT list is targeting the fish industry and that the presence of the chemicals does not necessarily cause disease or cancer.

**Lewellen Matthews** - representing Northwest Pulp and Paper. Lewellen stated that the PBT Rule should follow the significant rule making process and was concerned that industry will have new permitting requirements simply because a chemical makes the PBT list. She said that Ecology should not treat the Rule as procedural if it is going to cause significant change and cost to businesses.

## Meeting Feedback

- Committee members would like to have meeting materials before the meeting, preferably one week.

## Next Steps

The next PBT advisory committee meeting is scheduled for **October 14<sup>th</sup>**. The purpose of the meeting will be to present and discuss a more detailed and comparative analysis of the different PBT criteria currently in use, to further discuss options to address technical issues associated with the list and criteria, and to review and discuss technical approaches for ranking and prioritizing the PBT list in the draft Rule.

The schedule for the remaining PBT advisory committee meetings is:

**October 14<sup>th</sup>**

**November 17<sup>th</sup>**

**December 8<sup>th</sup>**

\*Attachments can be found on the Department of Ecology's website or obtained by email from Mike Gallagher

## Meeting Adjourned